



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re: Methyl Tertiary Butyl Ether ("MTBE")  
Products Liability Litigation

Master File C.A. No.  
1:00-1898 (SAS)  
MDL 1358

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**This Document Relates To:**

*City of Fresno v. Chevron U.S.A., Inc., et al.,*  
Case No. 04-Cv-04973

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**DECLARATION OF DAVID W. WRIGHT IN SUPPORT OF DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT FOR LACK OF EVIDENCE PERTAINING TO  
CAUSATION**

I, David W. Wright, hereby declare:

1. I am over the age of 21 years old and reside in Charlotte, North Carolina.
2. I am submitting this Declaration on behalf of Duke Energy Merchants, LLC ("DEM") and Northridge Petroleum Marketing U.S., Inc. ("Northridge") in support of Defendants' Motions for Summary Judgment for Lack of Evidence Pertaining to Causation and am authorized to do so.
3. I am currently employed by Duke Energy Business Services LLC, a wholly owned service company for Duke Energy Corporation, as Director of Property and Non-Income Tax. I was formerly employed by DEM as a Senior Director, Tax/ Accounting and Managing Director for Tax/ Accounting from 2000 until DEM ceased doing business in 2006. DEM remains a wholly owned subsidiary of Duke Energy Corporation. In my position with DEM, I was responsible for preparing and filing all of DEM's California Motor Fuels tax returns. In order to prepare these returns, I examined records of all purchases, sales, and transfers of gasoline by DEM as part of its Fresno, California operations. Preparing these returns required me to

perform a reconciliation of all gallons of gasoline bought and sold by DEM at the Fresno terminal. In performing these duties, it was sometimes necessary to consult with DEM employees in the Calabasas, California office regarding their purchases and sales of gasoline. Through the course of my work for DEM, I have personal knowledge regarding its gasoline trading business.

4. If called to testify, I could competently testify as to the matters detailed below.
5. Northridge was a commodities trading company with its office in Calabasas, California. It began doing business as a commodities trader in California in approximately June 1996. Northridge traded several different commodities, including gasoline with MTBE.
6. Northridge leased tanks at the Kinder Morgan terminal in Fresno, California. It began leasing these tanks in approximately June 1996. The company took title to gasoline refined by other companies as it arrived at the terminal via pipeline. Northridge then sold that gasoline at the terminal's loading rack. The buyers were independent businesses that used tanker trucks to transport gasoline to retail gasoline stations. These companies were typically referred to as "jobbers."
7. Sales were based on the daily spot-market price for gasoline. In other words, jobbers would buy Northridge's gasoline if it was cheaper than the gasoline offered by others that day. Northridge had no contracts or supply agreements with any company for the sale of gasoline.
8. All of Northridge's sales are free on board, meaning that the customer takes title and possession of the gasoline at the terminal's loading rack. Each sale produced a bill of lading. These bills of lading list the date and time of the sale, and the type and volume of gasoline sold. The bill of lading also shows the customer's billing address. Bills of lading typically do not contain any information showing where customers delivered their gasoline.

9. All of Northridge's business was conducted from its office in Calabasas, approximately 200 miles south of Fresno. Northridge had no employees present at the Fresno terminal. Since the only form of communication with customers was through the bills of lading, Northridge had no way of learning where its customers delivered their gasoline.
10. DEM purchased Northridge in February 2000. Prior to its purchase of Northridge, DEM did not do business in California. After the acquisition, Northridge changed its name to Duke Energy Merchants, LLC but otherwise continued conducting business in the same manner with the same employees.
11. DEM ceased doing business in California in July 2006.
12. In December 2008, Duke submitted to Plaintiff City of Fresno a list of all sales to jobbers by DEM and Northridge from the Fresno terminal. A true and correct excerpt of that list, capturing sales to InterCity Petroleum Market and Southern Counties Oil Co. d/b/a Total Energy for the years 1996 until 2003, is attached to this Declaration as Exhibit 1.
13. While doing business at the Fresno terminal, neither Northridge nor DEM,
  - a. manufactured MTBE or refined gasoline;
  - b. manufactured, purchased, or sold neat MTBE;
  - c. own, operate, or lease a refinery;
  - d. own real estate where a refinery operated;
  - e. own, operate, or lease tanker trucks, or otherwise transport gasoline to retail gasoline stations;
  - f. own, operate, or lease retail gasoline stations;
  - g. own real estate where a retail gasoline station was located;
  - h. market a "Northridge" or "Duke" brand of gasoline;

- i. enter into any branding agreements with retail gasoline stations;
- j. enter into any supply agreements with retail gasoline stations; or
- k. provide retail gasoline stations with operating manuals, operating standards, instructions, checklists, or any other written or verbal communications regarding how to operate their businesses.

14. It is my understanding that Plaintiff City of Fresno alleges that Northridge and DEM are liable for MTBE contamination at the sites of two retail gas stations: Red Triangle Oil and Valley Gas. Neither Northridge nor DEM exercised any control over how these retail gas stations conducted their business in any way. As stated above, neither Northridge nor DEM has any records indicating that gasoline sold to customers was ever delivered to these stations and neither Northridge nor DEM had any business relationship with these stations.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and ability.

Executed this 11<sup>th</sup> day of March, 2013 at charlotte, nc.



David W. Wright